

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 84-103
	:	
of	:	<u>JUNE 28, 1984</u>
	:	
JOHN K. VAN DE KAMP	:	
Attorney General	:	
	:	
RONALD M. WEISKOPF	:	
Deputy Attorney General	:	
	:	

THE BOARD OF ARCHITECTURAL EXAMINERS requests our opinion on the following question:

May the Board of Architectural Examiners delegate to the National Council of Architectural Registration Boards the grading of the graphic design portions of the architectural licensing examination?

CONCLUSION

The Board of Architectural Examiners may not delegate the grading of the graphic design portion of the architectural licensing examination to the National Council of Architectural Registration Boards.

ANALYSIS

Architects in California are licensed pursuant to chapter 3 of division 3 of the Business and Professions Code (§ 5500 et seq.) under the aegis of a nine-membered Board of Architectural Examiners ("the Board"). (§ 5510.) With certain exceptions, it is illegal for anyone to practice architecture¹ in California without a certificate of licensure issued him or her by the Board to do so. (§ 5536; cf. §§ 5537.1 - 5540.) Needless to say, "to insure that only competent individuals design buildings" (*Felix v. Zlotoff* (1979) 90 Cal.App.3d 155, 161), such certification follows only upon a qualified applicant satisfactorily passing an examination. (§ 5551; cf. § 5500.) Thus, among the duties of the Board is for it to "formulate and adopt a code of rules and regulations for its government in the examination of applicants to practice architecture in this state" (§ 5526; cf. § 5550), and the Board has done so. (See 16 Cal. Admin. Code, §§116-125.) Currently it generally requires all candidates for an architectural license to take and pass all parts (i.e., divisions) of the four-day Uniform Architect Registration Examination ("A.R.E.")² as well as an oral examination. (16 Cal. Admin. Code, §§ 119, 121.) It is the Board's authority to delegate grading of certain parts of the former that is the concern of this opinion.

The Uniform Architect Registration Examination is *the* licensing examination utilized by all the state architectural licensing boards in the United States. It is prepared and sold to the individual state boards by the National Council of Architectural Registration Boards ("NCARB"), a nonprofit corporation incorporated under the laws of the State of Iowa and composed of the legally constituted architectural boards in each of the 50 states, plus those of the District of Columbia, Guam, Puerto Rico, and the Virgin

¹ Section 5500.1 defines the "practice of architecture" as follows:

"A person engages in the practice of architecture within the meaning and intent of this chapter who holds himself out as able to perform or who does perform any service which requires or would require the application of the science, art, or profession of planning sites or of planning or designing buildings or architectural structures and their related facilities. Such services may include consultation, investigation, evaluation, planning, design, the preparation of instruments of service such as drawings and specifications, and supervision of construction insofar as customarily performed by architects."

² The current A.R. Examination schedule proceeds as follows: Day 1 = Divisions I (Construction Documents and Services @ 2 1/2 hrs.) and H (Materials and Methods @ 3 hrs.); Day 2 = Divisions D (Structural, General @ 2 1/2 hrs.); E (Structural, Lateral Forces @ 1 1/2 hrs.); F (Structural, Long Span @ 1 1/2 hrs.) and G (Mechanical/Plumbing/Electrical/Life Safety @ 2 1/2 hrs.); Day 3 = Divisions A (Pre-Design @ 4 hrs.) and B (*Site Design* @ 3 hrs.); and Day 4 = Division C (*Building Design* @ 12 hrs.). (NCARB, *The Architect Registration Examination, 1983 Circular of Information No. 2*, at 4.)

Islands.³ Most of the examination consists of written multiple choice questions which are machine scorable and are so scored. However two of its divisions call for *conceptual graphic responses*: a major (12 hr.!) graphic design solution in the Building Design portion (Division C) and three graphic vignettes in the site design portion (Division B). Needless to say, those graphic portions are not machine scorable, but must be evaluated by individual examiners. Traditionally that has been done by California architects appointed by the Board as its "commissioners."⁴ They "grade" the graphic portions of the examination based on criteria established by the Board and either pass or fail a candidate's response thereon under a "holistic" scoring system.

At its annual meeting in 1983, NCARB adopted a resolution to require the Board to administer its examination according to NCARB guidelines. Those guidelines require that tests which employ the use of graphic responses must be graded by graders from *all states* represented at each "grading session." In other words, NCARB is now specifically requiring that the A.R. examination be graded by "NCARB people," which would mean that architects other than the California architects (who are the Board's "commissioners") would be involved in grading California applicants. While those California architects would be among the "pool" of architect examiners or graders, their happening to grade a California applicant taking the examination at that "session" would be purely a matter of chance. Accordingly we are asked whether the Board may thus delegate the grading of the graphic design portion of the licensing examination to NCARB. We conclude that it may not.⁵

³ The purpose of NCARB is set forth in article II, section 1, of its Constitution:

"The Object of the Council shall be to promote high standards of architectural practice; to foster the enactment of uniform laws pertaining to the practice of architecture; to equalize and improve the standards for examination of applicants for State registration; to compile, maintain and transmit professional records to Member Boards for registered architects desiring this service; and to certify records and recommend registration for architects who meet the standards of the Council for interstate and/or foreign registration."

⁴ Section 111 of the Business and Professions Code authorizes the Board to appoint commissioners to give its examinations:

"Unless otherwise expressly provided, any board may with the approval of the appointing power, appoint qualified persons, who shall be designated as commissioners on examination, to give the whole or any portion of any examination. A commissioner on examination need not be a member of the board *but he shall have the same qualifications* as one and shall be subject to the same rules." (Emphasis added.)

⁵ The graphic portions of the NCARB A.R. Examination are graded by architects. (NCARB 1983 Circular of Information No. 2, *op. cit., supra*, at 5.) To dispose of the matter now, albeit perhaps prematurely, section 111 could not serve as a fount of authority for the Board to "commission" those NCARB architects from other states as its "commissioners on examination"

It has long been settled that a state may, consistent with constitutional guarantees, provide that only persons possessing reasonably necessary qualifications may practice a profession in an area of legitimate state concern (*Dent v. West Virginia* (1889) 129 U.S. 114, 122-123 (dentistry); *Hawker v. New York* (1898) 170 U.S. 189, 195 (medicine); *Lambert v. Yellowley* (1926) 272 U.S. 581, 596 (medicine); *Reetz v. Michigan* (1908) 188 U.S. 505 (medicine); *Watson v. Maryland* (1910) 218 U.S. 173 (medicine); *Williamson v. Lee Optical Co.* (1955) 348 U.S. 483, 488 (optometry and ophthalmology); *McNaughton v. Johnson* (1917) 242 U.S. 344, 347 (ophthalmology); *Ferguson v. Skrupa* (1963) 372 U.S. 726, 728 (debt adjuster); *Martin v. Walton* (1961) 368 U.S. 25 (attorney); *Semler v. Oregon State Board of Dental Examiners* (1935) 294 U.S. 608 (dentistry); *Graves v. Minnesota* (1926) 272 U.S. 425, 428 (dentistry); *Douglas v. Noble* (1922) 261 U.S. 165, 168 (dentistry); *Crane v. Johnson* (1916) 242 U.S. 339 (drugless practitioners); *Collins v. Texas* (1911) 223 U.S. 288 (osteopathy); *Smith v. California* (9th Cir. 1964) 336 F.2d 530 (civil engineering); *Daniel v. Family Security Life Ins. Co.* (1949) 336 U.S. 220 (funeral insurance business)) and that toward that end a state "legislature may confer a power and delegate considerable discretion in its exercise to an administrative board to make determinations both as to the knowledge and skill which fit one to practice a particular profession and as to the presence or absence of those qualities in a particular candidate." (*Henkes v. Fisher, supra*, 314 F.supp. at 106, citing *Douglas v. Noble, supra*, 261 U.S. 165.) Thus, as with the scheme and purposes of licensing statutes regulating the licensure and practice of other professions (see generally, Bus. & Prof. Code, divs. 2 (Healing Arts), 3, and 4 (Real Estate)), the Architectural Licensing Law is designed to

to grade the graphic portions of the examination, since the out-of-state delegates would *not* have "the same qualifications" as a board member as required by that section. Section 5514 defines the qualifications of the members of the nine-member Board as follows: three architect members (one of whom must be a building designer) who must have practiced *in California* for five years, with one resident and in practice in Southern California and one in Northern California at the time of their appointments; and five public members who may not be Board licentiates. Generally, the out-of-state architects whom NCARB would have grade the graphic portions of the A.B. Examination obviously would not meet the requirement of being an architect member of the California Board, and the issue cannot be determined on the chance that one just might, by happenstance, also be licensed, residing and practicing in California. Nor could they qualify as a "public member." While section 5514 only requires that they not be Board licentiates, it must be read in conjunction with section 450.5 of the code which additionally provides that a public member shall not have been engaged in pursuits which lie within the field of the industry or profession regulated by the Board of which he is a member, at any time within five years immediately preceding his appointment, "nor shall he engage in any such pursuits during his term of office." The out-of-state architect would thus be precluded from meeting the same qualifications as a public member of the Board.

protect the public (Stats. 1963, ch. 2133, § 1, p. 4432)⁶ in part by insuring that only competent individuals obtain the requisite certification or licensure to enable them to design buildings or otherwise engage in the practice of architecture in this state. (*Felix v. Zlotoff*, *supra*, 90 Cal.App.3d at 159, 161; *Henkes v. Fisher* (D.Mass. 1970) 314 F.Supp. 101, 106; cf. *Borrer v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; *Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 184; *Pennington v. Bonnell* (1936) 15 Cal.App.2d 316, 319, 320; 64 Ops.Cal.Atty.Gen. 192, 213 (1981); 59 Ops.Cal.Atty.Gen. 537, 542 (1976).) The Act defines the practice of architecture (§ 5500.1; fn. 1, *ante*), provides that no one without certification following examination may engage in that practice in California (§§ 5536, 5551), and establishes a Board of Architectural Examiners (§ 5510) with authority, inter alia, to adopt rules and regulations regarding the examination of applicants for certification (§ 5526). (Cf. *Felix v. Zlotoff*, *supra*, at 161.)

Two subsidiary questions are necessarily involved in determining whether a particular applicant meets the standard of fitness to practice architecture: one, what the knowledge and skill are which fit one to practice the profession, and two, whether the applicant possesses that knowledge and skill. (*Douglas v. Noble*, *supra*, 261 U.S. at 169.) "The latter finding is necessarily an individual one; [t]he former is ordinarily one of general application." (*Ibid.*) As noted, "these are matters appropriately committed to an administrative board." (*Id.*, at 170.)

With respect to the area of concern herein it cannot be gainsaid that "the ability to express graphically solutions to specific design or site planning problems, as is required in [the graphic portions of the A.R. Examination], is unquestionably a skill to be expected of professional architects [and therefore a proper subject of examination by the licensing Board]." (*Henkes v. Fisher*, *supra*.) Indeed in section 5550.1 the Legislature has required, as a condition to licensure, that an applicant demonstrate to the Board's satisfaction "knowledge and understanding of and proficiency in exterior and interior barrier free design." The question then is whether the Board must grade an applicant in those areas by itself or may delegate that responsibility to others. In other words, the issue is one of a secondary or sub-delegation by the Board of its responsibility to determine whether a particular applicant possesses requisite knowledge and skill in graphic design.

⁶ In amending the 1939 predecessor (Stats. 1939, ch. 33, p. 340, § 1) to the current architectural licensing law in 1963, the Legislature stated:

"In the interest of public health, safety and welfare, a more definite, effective, and enforceable law in the fields of architecture and building design, as set forth in this chapter, is deemed essential by the Legislature and is adopted to maintain the high standards of architectural practice, and, insofar as practical, to maintain the rights of those unlicensed persons who were legally earning their livelihood by engaging in building design at the time of enactment of this act." (Stats. 1963, ch. 2133, § 1.)

In answering the question our primary concern is to give effect to the Legislature's intention regarding that particular delegation. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 163; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) There we are reminded that as a general matter powers conferred upon public agencies that involve the exercise by them of judgment or discretion may *not* be surrendered or delegated by them to others unless such be expressly authorized by statute. (65 Ops.Cal.Atty.Gen. 32, 37 (1982) citing *California Sch. Employees Assn. v. Personnel Commission* (1970) 3 Cal.3d 139, 144; *Webster v. Board of Education* (1903) 140 Cal. 331, 332; *Moss v. Board of Zoning Adjustment* (1968) 262 Cal.App.2d 1, 10; *Schechter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396; 56 Ops.Cal.Atty.Gen. 399, 402 (1973); I.L. 73-159 (Sept. 17, 1973); see also 7 Ops.Cal.Atty.Gen. 70 (1946).) As we noted recently:

"[T]he rationale for not permitting that further delegation has been based on various theories, to wit, that their conference is in the nature of a public trust; that their delegation would be anomalous; that the original delegation is purely personal; and that there is a presumption that the officer in which the powers are reposed was selected because of his fitness and competency to exercise them. [Citations.] Although the rule has usually been used to test the propriety of the delegation of powers and duties to subordinates or deputies of the legislative delegatee, it has been, and was in the seminal case, [*Morton Bros. v. Pacific Coast S.S. Co.* (1898) 122 Cal. 352] applied to delegations made to third parties outside the legislative delegatee's agency."

(65 Ops.Cal.Atty.Gen. 32, 37 (1982).) On the other hand, "public agencies *may* delegate the performance of *ministerial tasks*, including the investigation and determination of facts preliminary to agency action." (*California Sch. Employees Assn. v. Personnel Commission, supra*; accord *Schechter v. County of Los Angeles, supra*, 258 Cal.App.2d at 396, 397 & 397 fn. 6.)

The particular aspect of agency activity involved herein is the making of a determination, from an evaluation of an applicant's response to the graphic design portions of the licensing examination, whether or not the particular applicant possesses, as it were, "the ability to express graphically solutions to specific design [and] site planning problems" (*Henkes v. Fisher, supra*, 314 F.Supp. at 106), including, inter alia, as specifically demanded by statute, whether or not he or she has demonstrated a "knowledge and understanding of and proficiency in exterior and interior barrier free design" (§ 5550.1). In determining whether that determination may be delegated by the Board to others to make we must answer two questions: one, does it involve a matter (or an area of activity) which the Legislature intended to be reserved for the Board itself, and two, does it involve the

exercise of subjective judgment in that area or regarding that matter? An affirmative answer to *both* questions precludes delegation to others under the aforementioned authorities, and we will answer the questions so in this case. As we now proceed to explain, we do not believe that *the evaluation of an applicant's answers to the graphic design portions of the licensing examination to determine whether he or she has demonstrated the requisite proficiency, skill, and knowledge to practice architecture in this state* can be delegated by the Board to persons other than its section 111 commissioners on examination because that undertaking involves the exercise of subjective judgment (discretion) in an area of activity that the Legislature has set for the Board itself (or, again, for its commissioners on examination).

In 1946 we confronted a similar issue. (7 Ops.Cal.Atty.Gen. 70, *supra*.) We were asked whether former section 5019 (now § 5015) of the Accountancy Act ("the board may employ clerks, examiners and assistants in the performance of its duties") authorized the Board to send its written examination papers to the American Institute of Accounting in New York to be graded without further review by the Board. We concluded that the Board was not authorized (by statute) to do so, thus:

"It is my opinion that this procedure would be contrary to the general rule *that an administrative agency may not delegate its discretion and principal functions to others unless expressly authorized to do so by statute*. The California Accountancy Act does provide that your Board may establish an examining committee of the Board having the power to examine all applications for the certificate of certified public accountant and to recommend to the Board applicants for this certificate who fulfill the requirements of the Act (Sec. 5033). With this exception I *find no authority in that Act for the delegation of the duty of your Board to examine all applicants*, and even this exception provides that the examining committee merely recommend to the entire Board applicants who, in the opinion of such committee, fulfill the requirements of the Act. *It therefore appears clearly the intention of this Act that only members of the Board of Accountancy may be examiners, and that any procedure or policy whereby your Board accepts the grading of examinations, whether by the American Institute of Accountancy or by any 'clerk' 'examiner,' or 'assistant,' would be an unauthorized delegation of one of the Board's principal duties*. Section 5019, permitting the Board to employ assistants 'in the performance of its duties,' does not contemplate any delegation to other than an examining Committee of the Board members as permitted by Section 5033) of this important function of examining applicants. It might be noted that the importance attached to these examining duties is reflected in the statutory plans common

to most other professional and vocational licensing agencies of this State."
(7 Ops.Cal.Atty.Gen., *supra*, at 70.)

(Cf. 65 Ops.Cal.Atty.Gen. 32 (1982) discussing whether the authority to manage the scene of an on-highway "hazardous materials incident," which Government Code section 8574.8(a) and Vehicle Code section 2454 vest in "the appropriate law enforcement agency having primary traffic authority on the highway where the incident occurs," could lawfully be delegated by that agency to another.)

The question we answer today is nigh-identical. The Legislature has established a Board of Architectural Examiners (§ 5510) of particular composition (§ 5514; cf. fn. 5, *ante*) to oversee the licensure of architects in this state. It has specifically provided with respect to the required examination for licensure,

—one, that "*the Board* shall formulate and adopt a code of rules and regulations for *its government* in the examination of applicants for certificates to practice architecture in this state" (§ 5526),

—and two, that "an applicant for a certificate to practice architecture . . . be required, *as part of the examination* for certification, to demonstrate *to the board's satisfaction* his or her knowledge and understanding of and proficiency in exterior and interior barrier free design" (§ 5550.1), and that "*the Board* . . . include questions regarding [such] as part of the examination" (*ibid.*).⁷ (Emphases added.)

Taken together, we consider this to reflect a deliberate intention by the Legislature to have the responsibility for evaluating the qualifications of applicants taking the architectural licensure examination repose with *the Board itself*. The plain wording of section 5550.1 surely so indicates with respect to one particular aspect of the examination (i.e., barrier free

⁷ Section 5550.1 reads as follows:

"An applicant for a certificate to practice architecture shall be required, as part of the examination for certification, to demonstrate to the board's satisfaction his or her knowledge and understanding of and proficiency in exterior and interior barrier free design.

"The board shall include questions regarding exterior and interior barrier free design as part of the examination. Such questions shall periodically be reviewed by the board in consultation with an ad hoc advisory committee of disabled persons appointed by the Department of Rehabilitation, in order to ensure that the examination reflects current regulations and the latest developments in barrier free design.

"(Added by Stats. 1980, c. 351, p. 696, § 1.)"

design for the handicapped), and we feel section 5526 does likewise with respect to the examination in general.⁸ Insofar then as any part of that evaluation involves discretion or subjective judgment, it may not in turn be sub-delegated to others, absent statutory authorization to do so.

Surely the evaluation of a candidate's performance on the graphic portions of the A.R. Examination does involve subjective judgment and certainly, unlike the machine scoring of the multiple choice answers, it cannot be said to be merely "ministerial in nature." (Cf. *Schechter v. County of Los Angeles*, *supra*, 258 Cal.App.2d at 396, 397 & 397, fn. 6.) The scoring of the graphic portions is done "holistically" whereby an overall pass/fail judgment is made after "judging each submission on how adequately and satisfactorily the submission incorporates, resolves, and responds to the conditions and requirements of the test problem." (NCARB, 1983 *Circular of Information No. 2*, *op. cit.*, *supra*, at 5.) While some criteria are given⁹ they allow much leeway for individual

⁸ Without belaboring the point, we note that section 5526 provides that *the Board* shall formulate rules and regulations for *its* government in the examination of applications for [architectural certification]." Plainly, the pronoun "its" refers back to the subject antecedent "the Board," and so the section speaks of "*the Board's government* in the examination of applicants" Although this charge is perhaps not as clear as that found in sections providing for the giving of licensure examinations by other professional licensing boards, we have no doubt that it is the Architectural Board which is to "give" the architectural licensing examination under section 5526. Taken in conjunction with section 5550.1, it would surely indicate so. In addition the language of section 5526 is not that much different from that in *Schechter v. County of Los Angeles*, *supra*, 258 Cal.App.2d 391, where the court held that a provision of a county charter, which provided that "the [Civil Service Commission] shall prescribe, amend and enforce rules for the classified service," specifically gave the power for classification of positions to the commission. (258 Cal.App.2d at 396.) Since that duty involved this exercise of discretion and "[could] not be said to be merely ministerial in nature," it could not be delegated in the long run.

⁹ "The graphic questions in . . . Division [B (Site Design) are] . . . evaluated for their adequacy with respect to stated zoning requirements; site restrictions; vehicular access; on-site circulation and parking; pedestrian access and on-site circulation; equal access and on-site circulation for handicapped persons; separation of pedestrian and vehicular circulation; site grading, surface drainage, and landscaping; building siting.

"The criteria for evaluating solutions to . . . Division [C (Building Design)] comprise an integrated series of aspects of Design, just as the A.R.E. comprises an integrated series of questions and problems related to the practice of architecture. Such aspects include conformance to building code requirements (fire safety, egress, barrier-free, life safety, lateral forces); relationships of activities and spaces; horizontal and vertical circulation patterns; conformance to programmed area and budget requirements; relationship to other on-site structures and surrounding neighborhood; appropriateness, proportion and design of spaces for their intended use; furnishings and equipment; relationship of the building to site conditions and characteristics; and

assessment and thus the subjective judgment of the particular examiner is crucial in deciding whether a particular candidate will pass or fail. But the graphic design portion of the examination is its *summa summarum* where a candidate's mettle is tested. From NCARB we learn:

"Criteria involving technical concepts such as structural and mechanical systems concepts, materials selection and methods of construction, lighting, and acoustical concepts are more thoroughly explored in the other Divisions of the A.R.E.—however, *insofar as the Design Divisions of the A.R.E. attempt to draw together all the knowledge, skills, and abilities of architectural practice, an evaluation of these attributes in a candidate cannot be removed from the grading of [them].*" (*Id.*, at 6.)

We do not believe the responsibility for evaluating so greatly a subjective and important an exercise can be delegated by the Board to others absent express statutory authority as is found in section 111. (Cf. fns. 4 & 5, *ante.*)

As we have seen, the Legislature has placed the responsibility to see that a particular applicant has the necessary skills and knowledge to practice architecture in, as it were, the Board's "lap," and it has made it the Board's duty and responsibility to see that the applicant in fact possesses them before being licensed. As we have also seen, a candidate's ability to "express graphically solutions to specific design or site planning problems . . . is unquestionably a skill to be expected of professional architects" (*Henkes v. Fisher, supra*, 314 F.Supp. at 106; cf. § 5550.1.) In this regard it is thus the Board's responsibility to see *both* (1) that the licensing examination contains *questions* which will sufficiently test a candidate's ability in that area *and* (2) that a particular candidate demonstrates to the Board's satisfaction through his or her *responses* that he or she does in fact possess the requisite knowledge and skill. (Cf. *Douglas v. Noble, supra*; §§ 5526, 5550.1.) Both aspects of the Board's duty involve the exercise of subjective judgment and just as the Board cannot abdicate its responsibility to see that an examination is sufficiently composed and asks the right questions in the area of graphic design, so too it cannot relinquish its ultimate responsibility to see whether a particular applicant has sufficiently answered them.

With respect to the former responsibility though, the Board can easily satisfy itself that an examination composed by others asks the right questions to meet (i.e., test) the standards relating to graphic design for California architectural licensure; all it need do is approve as its own the questions beforehand and "it would be entirely immaterial who

energy-conscious design." (NCARB, 1983 *Circular of Information No. 2, op. cit., supra*, at 5-6.)

prepared them." (*Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 840-841.) However with respect to its latter responsibility, the Board cannot so easily rely on the say-so and judgment of others *in the particular area of graphic design* to satisfy itself that a particular candidate-applicant's *response* to those questions passes muster. The task is one of individual and not general application and the determination of the "correctness" of a particular applicant's responses to questions in that area is not that easily made. There is no standard answer which is correct and the subjective judgment of the examiner is all important in deciding whether a particular response is satisfactory. Indeed, realizing the great degree of subjectivity that is involved in grading the graphic portions, the NCARB would use *three* independent graders to judge each submission and pool their judgments, with borderline cases being resolved by a fourth examiner's grade replacing the most errant grade of the other three. (NCARB, 1983 *Circular of Information No. 2*, *op. cit.*, *supra*, at 5.)

The Board has made it a precondition for the architectural licensure in this state for a person to take and pass all of the divisions, including Divisions B (Site Design) and C (Building Design) of the Uniform Architect Registration Examination. (16 Cal. Admin. Code, §§ 119, 121.) Given the great subjectivity inherent in the grading of its graphic design portions, given their comprehensive nature which purposefully and carefully draws together in one 12-hour session "all the knowledge, skills and abilities of architectural practice" (NCARB, 1983 *Circular of Information No. 2*, *op. cit.*, *supra*, at 6; cf. fn. 2, *ante*) and given the fact that the Board has made their being passed a *sine qua non* for architectural licensure, we do not believe that the Board can fulfill its responsibility to see that a candidate is fit to practice as evidenced by his or her performance on those graphic design portions without reviewing the candidate's responses themselves (or delegating that task to its commissioners of examination pursuant to section 111). This is not to say that the Board may not rely on the judgment of the NCARB judges to whatever degree it might find helpful, just as it relies on the NCARB to draft the examination which it adopts. But just as it may not adopt the examination as its own unless it first determines that it fits the proverbial "bill" for testing the necessary knowledge and skill needed for California architectural licensure, so too may it not fail to exercise the responsibility which in the long run *it* must exercise to judge the performance of an applicant thereon. With respect to the particular area of graphic design we do not believe that can be done without an actual review of the examination papers themselves.¹⁰

¹⁰ It has been suggested that since the Board of Architectural Examiners remains free to review and regrade the graphic portions of an examination when the NCARB has failed a candidate on it, the Board does not abdicate its responsibility to determine whether or not a candidate-applicant is fit to practice architecture. The worry of abdication of the Board's responsibility, however, is not with respect to candidates who fail the graphic portions of the examination when they should have passed, but with candidates whom the NCARB has passed on those portions when they should

Such conclusion is especially compelled in the situation presented where the grading of the examination would be done by persons whose perspective would not necessarily accord with California needs. It cannot be ignored that California architects are expected to be knowledgeable in certain areas which are not necessarily stressed elsewhere because of *this state's* particular laws and certain concerns. (See, e.g., § 5550.1 (architect must be conversant with design as it pertains to the *handicapped*) and 16 Cal. Admin. Code, § 121(d) (applicants to demonstrate knowledge of the effect of *seismic* forces on buildings).) Where the graphic portions of the A.R. Examination would call for an answer expressing those concerns, an architect-examiner reared in another state would not necessarily accord them the same respect as would be expected of one who is to practice in California. The possibility of such differences in perspective gives us further pause as to the delegability to out-of-state architects of the responsibility of evaluating graphic responses incorporating them insofar as those responses are to determine whether a particular applicant is fit to practice architecture in California.

Accordingly, we conclude that the Board of Architectural Examiners may not delegate to the National Council of Architectural Registration Boards the grading of the graphic portions of the architectural licensing examination.

have been failed. Since it is the Board's responsibility to judge the fitness of *all* candidates to practice architecture in this state, that responsibility is not fulfilled when a distinct possibility is raised that persons might be licensed to practice architecture in this state when they are really not qualified to do so.